

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

GERALD COVELL,

Plaintiff,

Case No. 14-cv-13033

v.

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT, AND REVERSING THE DECISION OF THE
ADMINISTRATIVE LAW JUDGE AND REMANDING FOR FURTHER
PROCEEDINGS**

On August 4, 2014, Plaintiff Gerald Covell filed a Complaint appealing the determination by the Social Security Administration that he was not entitled to benefits. Compl., ECF No. 1. December 6, 2015, Plaintiff Covell filed a motion for summary judgment seeking a determination that the Administrative Law Judge ("ALJ") who determined he was not disabled erred in that determination. Pl.'s Mot. Summ. J., ECF No. 15. Defendant Commissioner also filed a motion for summary judgment seeking affirmance of the ALJ's determination. Def.'s Mot. Summ. J., ECF No. 19. All pretrial matters in this case were referred to Magistrate Judge Mona Majzoub for determination of all non-dispositive motions and issuance of a Report and Recommendation. ECF No. 3. On January 12, 2015, the case was reassigned to Magistrate Judge Elizabeth A. Stafford. ECF No. 17.

On July 27, 2015, Judge Stafford issued a report recommending that Plaintiff's motion for summary judgment be granted, Defendant's motion for summary judgment be denied, and the Commissioner's decision be reversed and the case remanded for further factual findings. Rep. & Rec. 1-2, ECF No. 21. Judge Stafford reviewed the Administrative Law Judge's decision

to determine if it was supported by substantial evidence. *Id.* at 5. She found that the ALJ's determination at step five of the disability framework was not supported by substantial evidence. *Id.* at 6-10. Specifically, Judge Stafford noted that "[t]he Commissioner had the burden to demonstrate that Covell had transferable skills" but "[t]hat burden has not been satisfied because the [Vocational Expert]'s analysis of Covell's transferable skills is premised on a made-up job classification." *Id.* at 7.

Although the Magistrate Judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 21, is **ADOPTED**.

It is further **ORDERED** that Plaintiff's Motion for Summary Judgment, ECF No. 15, is **GRANTED**.

It is further **ORDERED** that Defendant's Motion for Summary Judgment, ECF No. 19, is **DENIED**.

It is further **ORDERED** that the decision of the Administrative Law Judge is **REVERSED and REMANDED** for proceedings consistent with the Report and Recommendation.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: August 14, 2015

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 14, 2015.

s/ Karri Sandusky
Karri Sandusky, Acting Case Manager